

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ERNEST V. PONTI and DELORES D. PONTI,  
  
Plaintiffs-Appellants,

v

EVEANN PROPERTIES, INC., VINCE  
FINAZZO, and JANICE FINAZZO,

Defendants/Cross Defendants-  
Appellees,

and

TOMMY TIRE, MICHAEL MIHAIL, and ANITA  
MIHAIL,

Defendants/Cross Plaintiffs-  
Appellees.

UNPUBLISHED  
February 23, 2006

No. 253890  
Wayne Circuit Court  
LC No. 03-308671-CB

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ERNEST V. PONTI,

Plaintiff-Appellant,

v

CORPORAL J. PINNEGAR, MICHAEL  
MIHAIL, EVEANN PROPERTIES, INC.,  
VINCENT FINAZZO, and JANICE FINAZZO,

Defendants-Appellees.

No. 253891  
Wayne Circuit Court  
LC No. 03-308672-NO

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Before: O'Connell, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order granting summary disposition to defendants on all counts in both cases. We affirm. This case arose after plaintiff Ernest Ponti painted a black "For Sale" sign on the white garage door of a commercial building that he used to own but forfeited to the state in tax proceedings. When Ponti returned the next morning, one of the owners of the business that occupied the building, defendant Michael Mihail, called the police. Defendant Corporal Pinnegar of the Taylor Police Department arrived, investigated, and asked Ernest Ponti to leave the property, but he ultimately refused. Defendant Pinnegar arrested Ernest Ponti for trespassing, but the charges were later dropped. Plaintiff Delores Ponti eventually redeemed the commercial property, and plaintiffs now claim a right to the rent proceeds Eveann Properties received from Tommy Tire. Ernest Ponti also claims damages for false arrest, false imprisonment, malicious prosecution, and abuse of process.

This is the third time that plaintiffs and Eveann Properties have been before this Court. In their first appeal, plaintiffs challenged an order granting Eveann Properties clear title to the commercial property. *Eveann Properties, Inc v Ponti*, unpublished per curiam opinion of the Court of Appeals, issued December 12, 2000 (Docket No. 213383). In *Eveann*, this Court reversed the trial court based on the following facts:

[The Pontis], who are husband and wife, owned the real property located in the city of Taylor that is the subject of this law suit. [The Pontis] failed to pay property taxes assessed for the year 1986. As a result, the state of Michigan acquired a tax lien against the property. MCL 211.40; MSA 7.81. Because the taxes remained unpaid for three years, the state's lien was offered for sale to private bidders at the 1989 annual tax sale. MCL 211.60; MSA 7.104. However, no private bidder purchased the lien, and it was automatically bid to the state pursuant to MCL 211.70; MSA 7.115.

Under MCL 211.67; MSA 7.112, when the first redemption period expired on the first Tuesday in May 1990, absolute title to the property vested in the state. In accordance with MCL 211.67a; MSA 7.112(1), the Michigan Department of Treasury issued a deed transferring title to the property to the state of Michigan on June 1, 1990. The second redemption period expired on the first Tuesday of November 1990. MCL 211.131c; MSA 7.190(1). According to the parties, the state deeded the property to the Michigan Department of Natural Resources (DNR) sometime during 1991.

On January 7, 1992, . . . Delores Ponti filed for personal bankruptcy under Chapter 13 of the United States Bankruptcy Code, 11 USC 1301 *et seq.* At that time, a right to redeem the property still remained because there had been no show cause hearing held before the Department of Treasury, which is required by MCL 211.131e(2); MSA 7.190(3)(2). Under § 131e, the redemption period is extended until "owners of a significant property interest" in the property have been notified of the show cause hearing. Moreover, there is a final opportunity to redeem the property within the thirty days following the show cause hearing. MCL 211.131e(3); MSA 7.190(3)(3).

On June 18, 1992, . . . Delores Ponti received notice that a § 131e show cause hearing would be held before the Department of Treasury July 13, 1992.

The parties dispute whether . . . Ernest Ponti also received notice of the hearing. In any event, neither [of the Pontis] appeared at the hearing, which was held as scheduled. The DNR later executed a quitclaim deed on August 23, 1995 conveying the property to . . . Eveann Properties, Inc., which then filed this action to quiet title to the property on May 31, 1996.

[The Pontis] challenged the state's title to the property, claiming that the state improperly proceeded against the property while . . . Delores Ponti was in bankruptcy. Specifically, [the Pontis] alleged that holding the § 131e show cause hearing violated the automatic stay provision of the Bankruptcy Code, 11 USC 362.

[Eveann Properties] moved for summary disposition under MCR 2.116(C)(10), arguing the show cause hearing provided for under MCL 211.131e; MSA 7.190(1) was in essence an act to perfect the state's tax lien and was therefore excluded from the automatic stay provisions of 11 USC 362(a). The trial court granted [Eveann Properties'] motion, finding that the show cause hearing was an "act to perfect an interest in property" and therefore was permitted under 11 USC 362(b)(3) and 11 USC 546(b). [*Id.* at slip op pp 1-2.]

This Court held that Delores Ponti's bankruptcy petition should have stayed the state's show cause hearing. *Id.* at slip op p 3. However, we reached that conclusion because "the state is not perfecting its interest in the property by holding the § 131e show cause hearing. At that point in the proceedings, the state no longer has a lien, but instead *holds title to the property.*" *Eveann, supra*, emphasis added. We went on to explain that the Pontis were "mistaken in their assertion that the state 'was never in a position to sell the property' to [Eveann Properties]. Instead, we hold that the state never extinguished [the Pontis'] redemption rights to the property." *Id.* Back in the trial court, Eveann brought a motion for a preliminary injunction to prevent the Pontis from interfering with its ownership interest, but the trial court denied the motion on the basis that the Court of Appeals did not remand the case, but simply reversed.

The following facts are not materially disputed. Nine days after the hearing, Ernest Ponti went to the property and painted the words "for sale" in black paint across the building's white folding doors. Mr. Ponti returned between 7:30 and 8:00 a.m. the following morning with his son. When he arrived, defendant Michael Mihail was in the process of covering up the words by nailing up a piece of plywood. Mr. Ponti's son asked Michael what he was doing, and Michael went inside the building and called the police.

When Pinnegar arrived, he first stopped and spoke with Mr. Ponti, and then went inside to speak with Michael Mihail. Mr. Mihail told Pinnegar "that he was doing business at that location, and that Mr. Ponti was a previous owner of the property, and that he was there trying to place signs on the property to list it as for sale again, and that he didn't want him there." Mr. Mihail also told Pinnegar that he was the lawful tenant, that he ran the business there, and that he wanted Ernest to leave. Pinnegar told Mr. Mihail that he wanted to talk to the owner, and Mr. Mihail called defendant Vincent Finazzo and handed Pinnegar the phone. Vincent Finazzo confirmed that his company, Eveann Properties, had owned the property for the past six years.

Pinnegar and Mr. Mihail went back out to talk to Mr. Ponti, who had spread out a stack of papers a couple of inches tall on the hood of his car to show the officer that he owned the property. Pinnegar told Mr. Ponti he had to leave, but Mr. Ponti said “I don’t have to leave his property. . . . [I]t’s my property.” At this point, Pinnegar asked Mr. Ponti to show him some evidence of ownership, and Mr. Ponti showed him the Court of Appeals opinion and other court documents. Mr. Mihail silently stood and watched while Mr. Ponti presented his documentation, but he eventually went back inside the building.

According to his deposition, Mr. Ponti tried to show the documents to Pinnegar “for 15 or 20 minutes, but I wasn’t making any headway.” Mr. Ponti testified that he insisted that the Court of Appeals decision gave the property to him and his wife, but Pinnegar said “I ain’t got enough time . . . to read this mumbo jumbo.” Pinnegar again told Mr. Ponti he had to leave, and Mr. Ponti told him he was not leaving. According to Mr. Ponti, Pinnegar said that Mr. Ponti “didn’t own the property, and he said that the signatures on the court opinion was not valid, and he also told me that someone else owned the property.” After at least forty-five minutes of Pinnegar trying to cajole Mr. Ponti into leaving, Pinnegar threatened to arrest him. Mr. Ponti testified that he again refused to leave and told Pinnegar “I’m not leaving, you’re going to have to arrest me.” Pinnegar decided to arrest Mr. Ponti, who was released a few hours later on bond.

According to Mr. Ponti, he and his wife redeemed the property in February 2002 using advanced proceeds from a sale of the property on land contract.

Plaintiffs brought two actions in the circuit court, one for false arrest and related claims, and another for \$172,000 in rent Tommy Tire paid to defendant Eveann Properties, Inc., during its period of ownership. The trial court eventually dismissed them both on the basis of MCR 2.116(C)(10). This Court reviews de novo a trial court’s decision to grant summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). We affirm.

Plaintiffs failed to present any factual or legal support for their claim that they were entitled to rent during the period that others had title to the property. They did not present any lease between themselves and Tommy Tire covering the period stated in their complaint. Moreover, during all but the last month of this time period, Eveann Properties owned the property, not plaintiffs. Although plaintiffs redeemed in February 2002 and claim rent from Tommy Tire through March 2002, plaintiffs did not own the land during this period, either; they had already sold it on land contract to a nonparty to fund their redemption.

Nevertheless, plaintiffs argue that they had the true ownership interest because the state’s failure to extinguish properly their redemption rights invalidated the state’s deed to Eveann Properties. We expressly rejected this argument in our first opinion, stating that “when the first redemption period expired on the first Tuesday in May 1990, absolute title to the property vested in the state.” *Eveann, supra* at slip op p 1. Once the state acquires “absolute title,” a former owner “cease[s] to have any more interest in title . . . than any stranger to that title.” *James A Welch Co, Inc v State Land Office Board*, 295 Mich 85, 93; 294 NW 377 (1940). This “absolute title” was transferred to Eveann Properties through quitclaim deed on August 23, 1995, and plaintiffs were not entitled to rent proceeds while Eveann held title. *Rosin v State Land Office Board*, 314 Mich 482, 486-487; 22 NW2d 833 (1946).

Furthermore, in *Griffin v Kennedy*, 148 Mich 583, 585; 112 NW 756 (1907), our Supreme Court held that the existence of a right to redemption does not diminish the state's absolute title, which granted the state the right to occupy the property, exclude others from it, or sell it. "After the expiration of his right to redeem from a regularly conducted sale at which the State has purchased . . . it (the State) owns and can dispose of the land as it pleases; and this is true, though the former owner of the land continues in possession, for he is in possession without the right of possession." *Id.* Therefore, the trial court did not err by granting summary disposition to defendants on plaintiffs' rent claims.

Addressing plaintiff Ernest Ponti's false arrest and false imprisonment claims, we first note that "to prevail on a claim of false arrest or false imprisonment, the plaintiff must show that the arrest was not legal, i.e., that it was made without probable cause." *Tope v Howe*, 179 Mich App 91, 105; 445 NW2d 452 (1989). In this case, Mr. Mihail was clearly occupying the building and running a business there. He was the individual who complained about Mr. Ponti's presence, and he was able to provide information to Pinnegar about who Mr. Ponti was and why he was there. Mr. Mihail was able to quickly put Pinnegar in touch with Mr. Finazzo, who immediately confirmed Eveann's ownership of the property. This confirmation, in turn, validated Mr. Mihail's explanation.

In contrast, plaintiff merely stood outside by his car while Pinnegar went inside the building to investigate. When Pinnegar returned, plaintiff tried to argue that he had a right to be there based on a stack of ordinary documents a couple of inches thick that were spread out on the hood of his car. Under these circumstances, Pinnegar had every reason to believe that he had already spoken with the true owner, and that Mr. Ponti was illegally refusing to leave property he did not own, which, of course, he was. *Griffin, supra*.

Nevertheless, Mr. Ponti argues that Pinnegar did not have *probable* cause because further investigation into plaintiff's documents would have, or at least could have, led Pinnegar to believe that plaintiff was lawfully on the property. "A policeman, however, is under no obligation to give any credence to a suspect's story nor should a plausible explanation in any sense require the officer to forego arrest pending further investigation if the facts as initially discovered provide probable cause." *Criss v City of Kent*, 867 F2d 259, 263 (CA 6, 1988). In this case, the obvious occupant and business owner put Pinnegar in touch with the property's true owner, and Pinnegar was not required to sift through inches of legal documents to verify<sup>1</sup> his probable cause to arrest Mr. Ponti. On the basis of the undisputed circumstances, Pinnegar had probable cause to arrest Mr. Ponti, and the false arrest and false imprisonment claims against Pinnegar fail. *Tope, supra*.

Furthermore, the private defendants merely provided Pinnegar with truthful information and are not liable for false arrest or imprisonment for Pinnegar's independent decision to arrest plaintiff. *Lewis v Farmer Jack, Inc*, 415 Mich 212, 218-219; 327 NW2d 893 (1982). As in *Lewis*, plaintiff fails to indicate that defendants withheld any relevant information, and the record

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<sup>1</sup> Of course, it does not help Mr. Ponti's argument that any further investigation by Pinnegar would only have validated the factual basis for his conclusion that Mr. Ponti was trespassing.

indicates that Pinnegar even knew about plaintiffs' right to redeem the property. Therefore, Ernest Ponti's claims of false arrest and false imprisonment were properly dismissed.

Plaintiff has also failed to present evidence to satisfy the elements of malicious prosecution. In *Matthews v Blue Cross Blue Shield of Michigan*, 456 Mich 365, 378; 572 NW2d 603 (1998), our Supreme Court established the following elements for malicious prosecution:

(1) that the defendant has initiated a criminal prosecution against him, (2) that the criminal proceedings terminated in his favor, (3) that the private person who instituted or maintained the prosecution lacked probable cause for his actions, and (4) that the action was undertaken with malice or a purpose in instituting the criminal claim other than bringing the offender to justice.

Plaintiff failed to refute defendants' evidence that Pinnegar alone decided to arrest plaintiff, and the prosecutor was not encouraged or otherwise influenced during the prosecution. When officials do not act at the behest of private individuals, but exercise their independent discretion on the basis of information the individuals honestly provided, the private individuals have a "complete defense" to a malicious prosecution claim. *Id.* at 384. Plaintiff also absolutely failed to demonstrate that defendants did not have probable cause to believe that he actually trespassed. Eveann owned the property, and Mr. Finazzo correctly relayed that information to Pinnegar. Mr. Ponti then refused to leave the premises at Pinnegar's direction. Whether defendants had probable cause to institute and maintain the action is a separate and distinct element from whether they had an ulterior motive. *Matthews, supra*. Because he was actually trespassing, defendants' statements and actions were supported by probable cause, and plaintiff's malicious prosecution claim fails. *Matthews, supra; Peterson, supra* at 21.

Regarding the abuse of process claim against Mr. Finazzo, plaintiffs' counsel simply failed to present any evidence to the trial court of an act that was improper. Without an improper act in the use of process by Mr. Finazzo, the abuse of process claims fail as a matter of law. *Bonner v Chicago Title Ins Co*, 194 Mich App 462, 472; 487 NW2d 807 (1992). Although plaintiffs' counsel claimed that Mr. Finazzo offered to drop the trespassing charges in exchange for a cheap land contract, none of the deposition transcripts or other documents support counsel's accusation. In contrast, defendants presented the prosecutor's affidavit, which stated that he controlled the entire prosecution and conducted it in accordance with his own discretion and without any outside influence. Mr. Finazzo's testimony revealed that he was a subpoenaed witness at Mr. Ponti's trespass proceedings. Therefore, Mr. Ponti simply fails to provide factual support for his allegations that Mr. Finazzo improperly used the legal process for ulterior purposes.

Affirmed.

/s/ Peter D. O'Connell  
/s/ Michael R. Smolenski  
/s/ Michael J. Talbot